IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.23 OF 2002 AND APPEAL FROM ORDER NO.39 OF 2002

APPEAL FROM ORDER NO.23 OF 2002

State of Goa,
rep. by the Executive Engineer,
Works Division VII (NH),
Public Works Department,
having his office at Old Bus Stand,
Panaji-Goa ..... APPELLANT

VERSUS

M/s. U.P. State Bridge
Corporation Limited,
A Government of U.P.
Undertaking having
registered office at
Setu Bhavan,
16, Madan Mohan
Malviya Marg,
Lucknow - 226 001 ..... RESPONDENT.

Mr. V.P. Thali, Addl. Advocate General, with Ms. S. Linhares, Addl. Government Advocate, for the Appellant.

Mr. S.G. Dessai, Sr. Advocate, with Mr. Rohit Bras de Sa, Advocate, for the Respondent.

APPEAL FROM ORDER NO.39 OF 2002

State of Goa,
rep. by the Executive Engineer,
Works Division II,
Irrigation Department,
Fatorda,
Margao, Goa ..... APPELLANT

VERSUS

M/s. Heera Construction
Company, Citi Center,
113, 1st Floor,
Patto Plaza,
Panaji, Goa ..... RESPONDENT.

Mr. V.P. Thali, Addl. Advocate General, with Ms. S. Linhares, Addl.Government Advocate,for the Appellant.

Mr. M.S. Usgaonkar, Sr. Advocate, with Mr. Sudesh Usgaonkar and Mr. Sanjay Sardesai, Advocates, for the Respondent.

CORAM : S. RADHAKRISHNAN,J.

DATED : SEPTEMBER 26, 2002.

ORAL JUDGMENT

By both these Appeals the State of Goa has challenged the Orders passed by the IInd Additional District Judge, North Goa,Panaji, and the IInd Additional District Judge, South Goa, Margao, whereby both the learned Judges have construed the objections filed by the Appellant with regard to the Arbitral Award to be time-barred and, accordingly, the Applications filed by the Appellant herein were rejected.

2. As far as Appeal From Order No.23 of 2002 is concerned, the Arbitral Award was passed on 8th August, 1997. Across the Bar,the learned Counsel for the Respondent states that the Appellant State of Goa had received the aforesaid Arbitral Award on 4th September, 1997. Thereafter, on 7th of February 1998, the Civil Judge, Senior Division by a notice informed

the Appellant regarding filing of objections and the date was fixed as 17th March, 1998. In pursuance thereof, the Appellant State of Goa had filed the objections before the Civil Judge, Senior Division, under Section 30 of the Arbitration and Conciliation Act, 1940.

3. After hearing all the parties, the Civil Judge, Senior Division at Panaji dismissed the aforesaid Application on 20th April 1999 holding that the application was governed by the new Arbitration and Conciliation Act, 1996 and as such, ruled that the said Court lacked jurisdiction to decide the said Application. Aggrieved thereby, the Appellant had filed a Civil Revision Application before this Court, being Civil Revision Application No.149 of 1999, against the said Order of dismissal dated 20th April, 1999. This Civil Revision Application was filed by the Appellant State of Goa on 8th July,1999. Finally, this Court dismissed the above Civil Revision Application on 17th February, 2000 and a certified copy of the said Order was obtained by the State of Goa on 13th March, 2000.

4. Subsequently, the Appellant, on 28th April 2000, filed the objections under Section 34

of the Arbitration and Conciliation Act, 1996 which is registered as Civil Miscellaneous Application No.88 of 2000 before the IInd Additional District Judge, North Goa, Panaji. The said Civil Miscellaneous Application came to be dismissed by the learned IInd Additional District Judge, North Goa, Panaji by his Order dated 3rd October, 2001 which is impugned in this Appeal from Order. The main ground on which the aforesaid Civil Miscellaneous Application was dismissed was that the objections have been filed beyond the time prescribed in law and the argument that the benefit of Section 14 of the Limitation Act ought to be extended to the case of the Appellant was rejected holding that the said benefit under Section 14 of the Limitation Act will not apply. Aggrieved by the aforesaid Order dated 3rd October, 2001 passed by the learned IInd Additional District Judge, the present Appeal from Order No.23 of 2002 has been filed by the Appellant.

5. As far as the Appeal from Order No.39 of 2002 is concerned, the Arbitral Award was passed on 8th November, 1997. On 21st January, 1998, the Appellant State of Goa was served with a notice from the Civil Judge Senior Division regarding the Award being filed in that Court and registered as

Special Civil Suit and the date was fixed as 17th March 1998 for filing objections. The State of Goa filed objections on 29th January 1998 under Sections 15, 16, 30 and 33 of the Arbitration and Conciliation Act, 1940. Finally, the Civil Judge, Senior Division, by his Order dated 7th May, 1998, declined to entertain the said objections and dismissed the Application filed by the State of Goa. Thereupon, the Appellant herein had filed fresh objections under Section 33 and 34 of the Arbitration and Conciliation Act, 1996 before the same Court on 6th June, 1998. Finally, this Civil Miscellaneous Application was dismissed on 21st March 2002 holding that the objections filed by the State of Goa were clearly time-barred and the benefit of Section 14 of the Limitation Act cannot be availed of by the State of Goa. Aggrieved by the aforesaid Order dated 21st March 2002 passed by the learned IInd Additional District Judge, South Goa, Margao, the present Appeal from Order has been filed on 11th January 2002 before this Court.

6. Shri Thali, the learned Addl. Advocate General, appearing on behalf of the Appellant State of Goa, very strongly contended that benefit of Section 14 of the Limitation Act ought to have been extended to the instant case

inasmuch as the Appellant was prosecuting with due diligence the aforesaid proceedings in good faith and, as such, the time spent by the Appellant State of Goa ought to be excluded in view of the fact that the Appellant was proceeding bonafide in a Court without jurisdiction.

7. In that behalf, Shri Thali, the learned Addl. Advocate General, relied on a judgment of the Hon'ble Supreme Court in **Union of India v. Popular Construction Co.[(2001) 8 SCC 470]** contending that in the aforesaid judgment, the Supreme Court has dealt with only the provisions under Section 5 of the Limitation Act and not Section 14 of the said Act. In the above judgment, the Hon'ble Supreme Court, in clear and unequivocal terms has held that in view of the clear provision in the Arbitration and Conciliation Act, 1996, especially Section 5 of the said Act read with Section 34 thereof, the period of limitation prescribed under the Arbitration and Conciliation Act, 1996 by specifically mentioning 3 months and a further period of 30 days "but not thereafter" has to be construed as prevailing over the provisions under Section 5 of the Limitation Act and as such the benefit of Section 5 of the Limitation Act could not be extended.

8. The learned Counsel submitted that in matters pertaining to an application filed under Section 34 of the Arbitration and Conciliation Act, 1996, the party concerned has to file the application within a period of 3 months and a further period of 30 days is granted which can be condoned by the Court but not thereafter. Therefore, the Supreme Court has clearly held that no further extension would be granted and no condonation beyond the said period of 30 days can be granted by the Court.

9. Mr. Thali also referred to another Judgment of a learned Single Judge of our High Court in **Pushpa P. Mulchandani (Mrs.) & others v. Admiral Radhakrishin Tahilani (RETD.) & others [2000(1) Bom.C.R. 592],** wherein the learned Single Judge of our High Court has observed as under :-

> **"28.** Upon a conspectus, I am of the view that there is no substance in the contention of Mr. Bulchandani. Notwithsanding that the 1996 Act contains no specific words of exclusion, an examination of the scheme of the Act would suggest that the intention is to exclude the application of the provisions of sections 4 to 24 of Limitation Act. This is clearly evidenced by the words "but not thereafter" used at the end of the proviso to sub-section (3) of section 34."

10. Shri Thali thereafter referred to another judgment of the Supreme Court in **Lala Ram v. Hari Ram [1969(3) SCC 173]. He laid s**tress on the observations of the Supreme Court in Paragraphs 7 and 8 of the said judgment to contend that such delay can be condoned under Section 14 of the Limitation Act.

11. Thereupon, Mr. Thali, the learned Addl. advocate General, referred to another Supreme Court judgment in **P. Mishra v. Mal Narayan Sharma and another [1970(2) SCC 369].** He laid emphasis on the following observations of the Supreme Court in paragraph 7:-

> "It was held that in the absence of any express provision to the contrary in the special statute, the provisions of the Indian Limitation Act, 1908, contained in Section 4 and Section 9 to 18 and 22 shall apply to the extent to which they were not expressly excluded by any special or local law."

12. Shri Thali thereafter referred to another judgment of the Supreme Court in **The Commissioner of Sales Tax, U.P. v. M/s. Madan Lal Das & Sons, Bareilly** [(1976) 4 SCC 464]. The learned Counsel pointed out that in the said judgment the Hon'ble Supreme Court had applied

Section 12(2) of the Limitation Act, 1963 to exclude the time spent in obtaining the certified copy.

13. Similarly, Shri Thali, the learned Counsel for the Appellant, also referred to and relied on another Supreme Court judgment in **Mukri Gopalan v. Cheppilat Puthanpuravyil Aboobacker [(1995) 5 SCC 5].** He contended that in the said judgment the Supreme Court had construed the appellate authority to be a Court under Section 18 of the Kerala Rent Control Act and, accordingly, the provisions of Section 4 to 24 of the Limitation Act were held to apply. Therefore, the said appellate authority had ample jurisdiction to consider and condone the delay under Section 5 of the Limitation Act. Shri Thali, the learned Addl. Advocate General, also sought to distinguish Section 5 and Section 14. He urged that Section 5 dealt with sufficient cause for condoning delay whereas Section 14 deals with the computation of period of limitation when a party has been prosecuting with due diligence certain proceedings which ought to be excluded. He also contended that Section 5 seeks to extend the period of limitation whereas Section 14 seeks to exclude the period spent by a party bonafide litigating before a Court

without jurisdiction. Shri Thali, therefore, contended that the learned Additional District Judges had committed a serious error in not applying Section 14 of the Limitation Act in both the above cases and had wrongly construed that the benefit of Section 14 of the Limitation Act could not be given. Therefore, the learned Counsel submits that even though the aforesaid judgment of the Supreme Court in **Union of India v. Popular Construction Co.(supra) and the learned Single Jud**ge's judgment in **Pushpa P. Mulchandani's** case **(supra) were** dealing only **with the issue whether the benefit** of Section 5 of the Limitation Act ought to be extended or not and both the aforesaid judgments do not deal with the specific issue as to whether benefit under Section 14 of the Limitation Act could be extended or not.

14. In that behalf, Shri Thali, the learned Counsel for the Appellant also strongly relied on another judgment of our High Court in **Reshma Constructions v. State of Goa [1998(1) Goa L.T. 311]** especially the following observations of the learned Single Judge in the said judgment:

> "Being so, having held that the provisions of the new Act would apply to the proceedings in question, it will be unjust to deny the opportunity to the respondent to take recourse under Section 33

> and/or Section 34, if it so desires, considering the fact that it had already filed objections under the provisions of the old Act. Moreover, the said application, if filed now, would be certainly barred by law of limitation in terms of the provisions contained in Section 34(3) of the new Act, but for the benefit being extended to the respondent in terms of Section 14 of the Limitation Act, 1963. Undisputedly, the respondents had been prosecuting the matter with due diligence in the Civil Court under the bonafide belief that the proceedings were governed by the provisions of the old Act. In the facts and circumstances, the period spent from 7.9.96 till the date of this Judgment is necessarily to be excluded for the purpose of calculation of the limitation period under Section 33(1) and/or Section 34(3) of the new Act in case the respondent prefers to take recourse under Sections 33 or 34 of the new Act. "

15. Therefore, the learned Addl. Advocate General contends that this issue of application of Section 14 of the Limitation Act was considered by the learned Single Judge in the aforesaid judgment and has applied this principle under Section 14 of the Limitation Act and had actually excluded time spent in bonafide litigation in a Court without jurisdiction. Further, the learned Addl. Advocate General contended that the IInd Additional District Judge, South Goa, Margao has committed serious error in not allowing the Appellant to rely upon Section 14 of the Limitation Act for the

purpose of excluding the period in a legal proceeding bonafide in a Court without jurisdiction. The said benefit ought to have been given and the objections ought to have been considered on merits and not rejected on the ground that the same was barred by law of limitation.

16. Shri S. G. Dessai,the learned Counsel appearing on behalf of Respondent, as far the Appeal from Order No.23 of 2002 is concerned, strongly contended that Section 14 of the Limitation Act will not apply in the instant case and the judgment of the learned IInd Additional District Judge, North Goa, Panaji is absolutely right in not excluding the time as contemplated under Section 14 of the Limitation Act. Similarly, the learned Sr. Counsel Shri Usgaonkar appearing for the Respondent in Appeal from Order No.39 of 2002 also contended that the benefit of Section 14 cannot be extended in the instant case and the learned IInd Additional District Judge, South Goa was absolutely right in not extending the same and holding the said application to be clearly time-barred.

17. Shri Usgaonkar, the learned Sr. Counsel appearing for the Respondents in Appeal from Order No.39 of 2002, referred to the judgment of the

Hon'ble Supreme Court in **Rajpur Ruda Meha and others v. State of Gujarat (AIR 1980 SC 1707)** to contend that the judgment of the learned Single Judge in **Reshma Constructions v. State of Goa (1998(1) GLT 311)** wherein the learned Single Judge has given the benefit of Section 14 of the Limitation Act cannot be construed as judgment laying down the law pertaining to applicability of Section 14 of the Limitation Act in the context of Arbitration and Conciliation Act, 1996. In that context, the learned Counsel has referred to the above judgment in **Rajpur Ruda Meha and others v. State of Gujarat (supra)** wherein the Supreme Court has clearly held that if it were to be treated as a precedent to be binding on the Court, then a discussion by the Court after pondering over in depth over the issue was necessary. Shri Usgaonkar thereafter referred to another judgment of the Supreme Court in **The Commissioner of Sales Tax U.P. v. M/s. Parson Tolls and Plants (AIR 1975 SC 1039).** In the said judgment, the learned Counsel strongly relied on the observations of the Supreme Court from paragraph 10 onwards. In that, the learned Counsel emphasised the observations of the Supreme Court in Para 11 of the said judgment referring to rule of interpretation to the effect that, "the will of the legislature is the supreme law of the land, and demands perfect obedience". "Judicial power is never exercised", said

Marshall C.J. of the United States, "for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the Legislature; or in other words, to the will of the law."

18. In the light of the above, Shri Usgaonkar contended that in view of the provisions of Section 5 of the Arbitration and Conciliation Act, 1996 and the proviso to Section 34(3) of the Arbitration and Conciliating Act, 1996 the maximum period for filing the application or to condone the delay would only be 30 days beyond the prescribed period, namely, 3 months. He emphasized that the Legislature has specifically used the words "but not thereafter" to indicate that even the Court's power to condone delay would only be limited to 30 days beyond the prescribed period of 3 months but not thereafter.

19. Shri Usgaonkar thereafter referred to another Judgment of the Supreme Court in **Hukumdev Narain Yadav v. Lalit Narain Mishra [(1974)2 SCC 133].** He pointed out that in that judgment, the Supreme Court has held that the Court has to see if in a particular Act, the remedy provided therein is intended to be a complete code by itself which alone should govern the several matters provided by it.

Therefore, the argument by the learned Counsel is that the Arbitration and Conciliation Act, 1996 which is a code by itself dealing with all the matters pertaining to arbitration, which itself provides for a period of limitation as clearly indicated in Section 34, Clause (3) Proviso. Hence there is no recourse for a party to refer to the Limitation Act since the special Statute excludes the same. Therefore, the learned Counsel contends that the provisions of the Limitation Act obviously gets excluded by necessary implication as per the wording of proviso to Clause (3) of Section 34 under the said Arbitration Act of 1996.

20. Under the aforesaid facts and circumstances, the learned Counsel contends that the learned IInd Additional District Judge, South Goa, Margao, was absolutely right in not extending the benefit of Section 14 of the Limitation Act to exclude the time as sought to be contended by the Appellant.

21. Shri Usgaonkar thereafter contended that the Hon'ble Supreme Court in the case of **Union of India v. Popular Construction Co. (supra) has held** unequivocally that as far as Section 34 of Arbitration Act is concerned, the crucial words were "but not thereafter" as used in Proviso to sub-section (3) of Section 34 of the Arbitration and Conciliation Act,

1996, which was construed by the Supreme Court to amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act. If one looks at Section 29(2) of the Limitation Act it very clearly provides that the provisions contained in Section 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. Shri Usgaonkar contended that by the aforesaid judgment the Supreme Court has clearly ruled that the above Proviso to Clause 3 of Section 34 of the Arbitration and Conciliation Act, 1996 would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act. The learned Counsel also pointed out that in the aforesaid judgment it is ruled that to the extent the judicial intervention is curtailed by providing in the aforesaid Arbitration and Conciliation Act,it makes abundantly clear that there is a non-obstante clause that no judicial authority shall intervene except where so provided. Shri Usgaonkar thereafter pointed out that the main objective of the Arbitration and Conciliation Act, 1996 was to provide speedy and efficacious remedy to the party and especially in view thereof Section 5 was enacted indicating that even the judicial intervention should be expressly restricted only to the areas where it specifically empowered. In the light of the above,

Section 34 Clause 3 Proviso also makes it clear that if at all any application were to be made the same ought to be made within a period of 3 months and a further period of 30 days could be condoned by the Court to a party showing sufficient cause,"but not thereafter ". In the light of the above, the learned Counsel Shri Usgaonkar contended that the above judgment of the learned IInd Additional District Judge cannot be faulted.

22. Shri S.G. Dessai, the learned Senior Counsel appearing for the Respondent in Appeal from Order No.23 of 2002, also strongly contended that the judgment of the learned IInd Additional District Judge, North Goa, cannot be faulted for not applying Section 14 of the Limitation Act which could not be applied at all in view of the aforesaid judgment of the Supreme Court in **Union of India v. Popular Construction Co. (supra) and also** the judgment of the Single Judge of this Court in **Pushpa P. Mulchandani & others v. Admiral Radhakrishin Tahilani & others (supra).** Shri Dessai, the learned Sr. Counsel, also brought to my notice that the State of Goa had accepted the position in law that as far as the arbitral award is concerned, the Arbitration and Conciliation Act 1996 would be applicable and not the Arbitration and Conciliation Act of 1940 after the

judgment of this Court in **Reshma Constructions v. State of Goa [(1998) 1 G.L.T. 311].** The aforesaid Judgment was delivered on 12th March 1998 by this Court. The State of Goa had accepted the same and, in fact, the learned Counsel pointed out that in the light of the above, the State of Goa did not file any objections under the Arbitration and Conciliation Act, 1940 but filed the objections under the Arbitration and Conciliation Act, 1996. In Appeal from Order No.39 of 2002 the objections were filed on 6th June, 1998 accepting the view that the provisions of Arbitration and Conciliation Act, 1996 would be applicable and would be the proper law for the same. Mr. Dessai also contended that in view of the express provisions in Section 34(3) proviso, curtailing the Court's power with the words "but not thereafter", the Court could not have exercised the power either under Section 5 or even under Section 14. Shri Dessai contended that the general species of 'exclusion of time' or 'condonation of time' etc. were found in Sections 4 to 24. Therefore, Section 29 clearly mentions that when such exclusions or condonations are excluded specifically by special or local law, then the benefit under Section 29(2) of the Limitation Act will not be applicable. Therefore, Shri Dessai, the learned Senior Counsel, contended that the judgment of the IInd Additional District Judge is absolutely

proper and there is no error committed in the said judgment by not allowing the application under Section 14 of the Limitation Act.

23. After having considered the arguments advanced by both the learned Counsel on this issue whether the provisions of Section 14 of the Limitation Act can be made applicable or not, I am clearly of the view that the Appellant herein cannot take the benefit of the provisions of Section 14 of the Limitation Act for the following reasons:-

24. If one has close look at the judgment of the Hon'ble Supreme Court in **Union of India v. Popular Constructions (supra), the Supreme Court** after analysing all the aspects, has clearly held in paragraph 12 that as far as the language of Section 34 of the Arbitration and Conciliation Act of 1996 is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). This would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act. Hence there will be a bar to applying Section 5 or even 14 of the Limitation Act.

25. Apart from that, in paragraph 14 of the aforesaid judgment the Supreme Court has also

emphasised the importance of minimising the supervisory role of court in the arbitral process and this objective has found expression in Section 5 of the Arbitration and Conciliation Act, 1996 by restricting judicial intervention to a very limited extent as indicated in Section 5 of the Act by clearly mentioning that no judicial authority shall intervene except where so provided in this Part. Paragraphs 12 to 17 of the said judgment read as under:-

> " **12.** As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.
>
> **13.** Apart from the language, "express exclusion" may follow from the scheme and object of the special or local law:
>
> "[E]ven in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of

the subject-matter and scheme of the special law exclude their operation." (SCC p.146, para 17).

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process". This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

> "5. **Extent of judicial intervention.**- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part. "

15. The "Part" referred to in Section 5 is Part I of the 1996 Act which deals with domestic arbitrations. Section 34 is contained in Part I and is therefore subject to the sweep of the prohibition contained in Section 5 of the 1996 Act.

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that sub-section. Consequently by virtue of Section

34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that

> " where the time for making an application to set aside the arbitral award under Section 34 has expired... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court".

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

17. The appellant then sought to rely on a decision of this Court in **Union of India v. Hanuman Prasad & Bros.** to which one of us (Rume Pal,J.) was a party. It is contended that the decision is an authority for the proposition that Section 5 of the Limitation Act ' ' applied to objections to an award under the 1996 Act. It is true that in the body of that judgment, there is a reference to the 1996 Act. But that is an apparent error as the reasoning clearly indicates that the

> provisions of Section 30 of the Arbitration Act, 1940 and not Section 34 of the 1996 Act were under consideration. In order to clarify the position, we have scrutinised the original record of **Hanuman Prasad & Bros, deci**ded on 6-3-2000. We have found that that was indeed a case which dealt with an award passed and challenged under the Arbitration Act, 1940. No question was raised with regard to the applicability of the Limitation Act to the 1940 Act. The only issue was whether the High Court should have refused to condone the delay of 2 months and 22 days in filing the objection to the award. This Court found that sufficient cause had been shown to condone the delay and accordingly set aside the decision of the High Court. This decision is as such irrelevant. "

26. In the second judgment by the learned Single Judge of this Court in **Pushpa P. Mulchandani & others v. Admiral Radhakrishin Tahilani & others** (supra), our Court has held in unequivocal terms in Paragraph 28 that the Legislature has intended clearly to exclude the application of provisions of Sections 4 to 24 of the Limitation Act, in the context of proviso to subsection (3) of Section 34 of Arbitration and Conciliation Act, 1996.

27. In this context, the learned Additional Advocate General Shri Thali has contended that in both the judgments of the Hon'ble Supreme Court as well as the judgment of the learned Single Judge of this Court, only Section 5 of the Limitation

Act was involved whereas in the instant case the issue is pertaining to Section 14 of the Limitation Act.

28. If one takes a look at the scheme of Sections 4 to 24 of the Limitation Act, the same provides for various categories whereby time can be excluded and delay can be condoned. On this issue the Hon'ble Supreme Court in the aforesaid judgment of **Union of India v. Popular Construction Co. has un**equivocally taken a view that the words "but not thereafter" used in the proviso to sub-section (3) of Section 34 of the Arbitration and Conciliation Act, 1996 amounts to an express exclusion within the meaning of Section 29(2) of the Limitation Act. If that be so, the said "express exclusion" would obviously include all Sections 4 to 24 and the same need not be restricted only to Section 5 though Section 5 was involved in the matter before the Supreme Court.

29. As rightly pointed out by the learned Sr. Counsel Shri Usgaonkar that the judgment of the learned Single Judge in **Reshma Constructions v. State of Goa (supra) had onl**y made an observation that the benefit of Section 14 could be provided in that case. However, as rightly contended by Shri Usgaonkar, the same would not amount to a binding precedent inasmuch

as, as per tests laid down in the judgment of the Supreme Court in the case of **Rajpur Ruda Meha and others v. State of Gujarat (AIR 1980 SC 1707),** there is no discussion or consideration on the issue in depth whether Section 14 of the Limitation Act stood excluded or not in view of Section 34(3) proviso of Arbitration and Conciliation Act, 1996. Therefore, I am in agreement with the learned Counsel's contention that the said judgment of the learned Single Judge in **Reshma Constructions (supra)** cannot be treated as a precedent, in the sense, interpreting the scope of applicability of Section 14 of the Limitation Act in the light of Section 34, Clause (3) proviso of Arbitration and Conciliation Act, 1996, all the more in the light of the Supreme Court's decision in **Union of India v/s. Popular Construction Company.**

30. As far as the other judgments cited by the learned Counsel for the Appellant are concerned, the same would not be very relevant in the sense that the very issue of applicability of Section 29(2) of the Limitation Act in the context of Section 34(3) proviso of the Arbitration and Conciliation Act, 1996 has been specifically considered by the Hon'ble Supreme Court in the matter of **Union of India v. Popular Construction Co. (supra).** Hence the above cited judgments will

have no application at all to the facts and circumstances of these cases. Under the aforesaid facts and circumstances, I am clearly of the view that in the instant case the benefit of Section 14 of the Limitation Act cannot be availed of by the Appellant as has been rightly held by both the lower Court judgments. In fact, the learned Sr. Counsel Shri Dessai had pointed out that as far as Appeal from Order No.23 of 2002 is concerned, the Appellant does not satisfy even on merit with regard to Section 14 of the Limitation Act pointing out that at various stages there has been a lot of unexplained delay. This issue need not be dealt with inasmuch as at the threshold itself the Appellant is not entitled to benefit of Section 14 of the Limitation Act. This issue would be relevant only if Section 14 of the Limitation Act were to apply. As has been rightly pointed out by the Hon'ble Supreme Court, the main objective of the Arbitration and Conciliation Act, 1996 is to provide a speedy and efficacious remedy cannot be thwarted by excluding the time as sought to be contended in the instant case. The Hon'ble Supreme Court has made it specifically clear that the words "but not thereafter" used in the proviso to sub-section 3 of Section 34 of the Arbitration and Conciliation Act, 1996 would mean an express

exclusion within the meaning of Section 29(2) of the Limitation Act. If that be so, the Appellant cannot take benefit of Section 14 of the Limitation Act. Under the aforesaid facts and circumstances, I do not find anything erroneous or perverse in the judgments and orders passed by both the learned IInd Additional District Judges.

31. Both the Appeals from Order are devoid of substance, hence stand dismissed with costs.

32. Parties to act on an ordinary copy of this order duly authenticated by the Court Associate.

S. RADHAKRISHNAN,J.

ac.